IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6763 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAYAN EDUCATION TRUST

Versus

RAJPUT BACHHISING RAMBAHADURSING

Appearance:

1. Special Civil Application No. 6763 of 2002

MR DM THAKKAR for Petitioner No. 1

MR CHETAN K PANDYA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/10/2002

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 18-6-2002 passed by the Gujarat Primary Education Tribunal in

Recovery Application No.2 of 1999 which order is at Annexure `B' to the petition.

2. The grievance in the present petition is that the impugned order is passed in the course of recovery proceedings for enforcement of the judgment and order passed by the Tribunal on 7-8-1995, which is the subject mater of Special Civil Application No.3722 of 1999. It is further stated that the said petition was unfortunately dismissed for default but the petitioner management's application for restoration of the said petition is pending before this Court.

3. In the course of the aforesaid recovery proceedings, the Tribunal had passed an order dated 14-12-2001 directing the management to pay a sum of Rs.50,000/- to the respondent who was original applicant before the Tribunal. Thereafter the Tribunal passed order dated 21-1-2002 requiring the management to pay Rs.500/= by way of costs to the respondent-herein as the previous order was not being complied with. Since the management had not complied with the aforesaid orders, the Tribunal did not permit the management to place its defence before the Tribunal in the recovery proceedings and directed issuance of warrant against the Managing Trustee of the petitioner-trust.

4. At the hearing of this petition, Mr Chetan K Pandya appears for the respondent herein - the original applicant before the Tribunal who has supported the order of the Tribunal as the management has not complied with the previous orders of the Tribunal.

5. At the hearing of the petition today, Mr DM Thakkar learned counsel for the petitioner states that as required by this Court's order dated 24-7-2002, the petitioner has already deposited a sum of Rs.35,000/= with the Registry of this Court and that the petitioner-management is prepared to deposit the balance amount of Rs.15,000/- as directed by the Tribunal and the amount of costs at Rs.500/- subject to the condition that the respondent should give some security for withdrawing the said amount of Rs.15,000/- but the amount of Rs.35,000/- already deposited with the Registry should not be permitted to be withdrawn by the respondent.

6. Mr Chetan Pandya for the respondent opposes the above request and submits that since the respondent has succeeded in the original application before the Tribunal, the respondent is entitled to withdraw the entire amount of Rs.50,000/- plus Rs.500/- by way of

costs and further submits that the petitioner may be directed to pay the respondent the costs of this petition also.

7. Having heard the learned counsel for the parties, it appears to the Court that the interests of justice would be served if the petition is disposed of in terms of the following directions:-

(i) The petitioner-management shall pay a sum of Rs.15,000/- to the respondent herein by an a/c. payee demand draft in favour of the respondent by 1st November, 2002. The said amount of Rs.15,000/= shall be adjusted against the amount payable by the petitioner-management to the respondent as per the Tribunal's order dated 14-12-2001 and the impugned order dated 18-6-2002, without prejudice to the rights and contentions of the petitioner-management in the pending proceedings before this Court.

(ii) The petitioner-management shall also pay the respondent by a demand draft a sum of Rs.2000/= by way of costs awarded by the Tribunal as well as costs of this petition. The said amount shall also be paid by 1st November, 2002.

(iii) The amount of Rs.35,000/- deposited by the petitioner-management with the Registry of this Court shall be transferred to the Registry of the Gujarat Primary Education Tribunal, Ahmedabad and the said Tribunal shall get the said amount invested in a fixed deposit account with a nationalised bank for a period of one year and the quarterly interest on the said fixed deposit shall be ordered to be paid to the respondent.

(iv) The petitioner-management shall be permitted to place its defence in the recovery proceedings pending before the Primary Education Tribunal.

(v) After the petitioner-management pays the aforesaid sum of Rs.15,000/- and Rs.2000/- to the respondent as aforesaid, the impugned order dated 18-6-2002 in Recovery Application No.2 of 1999 shall stand set aside and the warrant issued by the Tribunal shall also stand set aside upon compliance with the aforesaid directions.

This order is passed, without prejudice to the rights and contentions of the parties in all proceedings

between the parties.

8. Subject to the aforesaid directions, the petition is disposed of. Rule is discharged.
Direct service is permitted.

(M.S. Shah,J)
zgs/-